

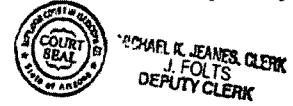
EXHIBIT A

EXHIBIT A

1 Charles P. Franklin (State Bar Number: 011209) chuck@chuckfranklin.com
2 Colby R. Kanouse (State Bar Number: 024601) colby@chuckfranklin.com
3 FRANKLIN & ASSOCIATES, P.A.
4 1920 E. University Drive, Suite 102
5 Tempe, Arizona 85281
6 Telephone: (480) 551-0406
7 Facsimile: (480) 551-0407
8 Attorney for Plaintiff

COPY

DEC 15 2010



6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 BOBBY BARBEE and LINDA BARBEE, a
9 married couple,

10 Plaintiffs,

11 vs.

12 ZURICH AMERICAN INSURANCE
13 COMPANY, a foreign corporation; JOHN
14 DOES I - X; JANE DOES I - X; BLACK
15 CORPORATIONS I - V; WHITE
16 PARTNERSHIPS I - V,

Defendants.

Case Number:

CV2010-081742

COMPLAINT

(Breach of Contract / Bad Faith)

(Jury Trial Demanded)

16 Plaintiffs, BOBBY BARBEE and LINDA BARBEE, by and through undersigned
17 counsel, as and for their complaints against Defendant ZURICH AMERICAN INSURANCE
18 COMPANY, allege as follows:

19 PARTIES, JURISDICTION AND VENUE:

20 1. Plaintiffs BOBBY BARBEE and LINDA BARBEE are a married couple residing in the
21 County of Maricopa, State of Arizona. At all times material hereto Plaintiff BOBBY
22 BARBEE was the named insured under the ZURICH AMERICAN INSURANCE
23 COMPANY accident / disability policy known as GTU4848418.

2. Upon information and belief, Defendant ZURICH AMERICAN INSURANCE COMPANY (hereinafter "ZURICH") is a foreign corporation conducting business in the County of Maricopa, State of Arizona. Such Defendant was at all times material hereto engaged in the selling and providing of insurance services to citizens of the State of Arizona, in the County of Maricopa. Such Defendant acted for the purposes of the allegations herein through its authorized agents in Arizona, whose names are presently unknown to Plaintiffs.
3. The true names and identities of the fictitious defendants are presently unknown to Plaintiffs. Such entities are partnerships, corporations, individuals or others who assisted or sold, secured or provided information concerning Plaintiff's insurance, or who otherwise caused or participated in causing the events out of which this lawsuit arises to occur. Such entities are named as fictitious defendants herein pursuant to the Arizona Rules of Civil Procedure, Rule 10(f). At such time as the true names or identities of such defendants are ascertained by Plaintiffs, they will seek leave of the Court to amend this Complaint to state the true names of the fictitious defendants.
4. Defendant ZURICH acted or failed to act through its servants, employees, agents, or ostensible agents, or partners or principals, whose acts were done within the scope of their actual, apparent, or ostensible employment or agency or authority, and, therefore, Defendant is liable under the doctrine of respondeat superior and / or vicarious liability for the acts of its agents, servants, employees, ostensible agents, partners and / or principals.
5. All events out of which these claims arise occurred in the County of Maricopa, State of Arizona.

1 6. The amount in controversy exceeds the minimum jurisdictional limit for this Court.

2

3

GENERAL ALLEGATIONS:

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5 7. Plaintiff is a former employee of Brinks, where he worked as the driver of an armored

6 car.

7 8. As part of his employment, Defendant was offered an insurance policy provided by

8 Defendant ZURICH.

9 9. Defendant purchased the insurance policy offered by ZURICH, which is known as GTU

10 4848418 (hereinafter "the policy").

11

12 10. The policy purchased by Plaintiff provided him with permanent disability insurance,

13 pursuant to the terms of which Defendant ZURICH would pay Plaintiff the principle sum

14 of \$500,000.00, less any plan benefits already paid, in the event he was injured in a

15 covered accident, and the injuries resulted in permanent and total disability as defined in

16 the policy.

17

18 11. Under the terms of the policy, a person qualifies for the permanent and total disability

19 benefit if they are: (1) permanently and totally disabled within 365 days of a covered

20 accident; (2) have been disabled for 12 continuous months; and (3) are unable to work for

21 any income at any job for which they are reasonably suited by education, training and

22 experience.

23

24 12. The policy was in effect on August 25, 2009.

25 13. On August 25, 2009, Plaintiff BOBBY BARBEE was operating a Pontiac sedan in the

26 HOV lane located on the far left side of westbound Interstate 10 in Phoenix, Arizona.

1 14. At the same time as that mentioned above, April Lyn Beardslee was operating her vehicle
2 in the adjacent lane. Ms. Beardslee failed to control her vehicle and as a result slammed
3 into Plaintiff's vehicle at approximately 65 m.p.h.

4 15. Mr. Barbee sustained serious injuries in the accident of August 25, 2010, and as a result
5 has become permanently and totally disabled as defined in the policy.

6 16. The accident of August 25, 2009, was a "covered" accident under the terms of the policy.

7 17. Plaintiff submitted his claim for permanent and total disability to Defendant ZURICH.

8 18. To date Defendant ZURICH has not provided any answer regarding coverage, and has
9 not paid benefits as required by the policy.

10 19. Defendant ZURICH has failed to provide Plaintiff with a full copy of the policy.

11 20. Defendant ZURICH has failed to recognize the applicable policy limit of \$500,000.00
12 pursuant to the terms of the policy.

13

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15 **COUNT I: BREACH OF CONTRACT:**

16

17 21. Plaintiff repeats and re-alleges each of the foregoing allegations as contained herein. In
18 addition, he alleges as follows:

19 22. Defendant ZURICH agreed pursuant to the terms of the policy to pay the principle sum
20 of \$500,000.00, less any other benefits previously provided for the accident of August 25,
21 2009, in the event Plaintiff became totally and permanently disabled as defined in the
22 policy.

23 23. Plaintiff BOBBY BARBEE was involved in a "covered" accident on August 25, 2009.

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1 24. As a direct and proximate result of the accident of August 25, 2009, Plaintiff BOBBY
2 BARBEE has become permanently and totally disabled as defined in the policy.
3 25. Despite Plaintiff BOBBY BARBEE's permanent and total disability, Defendant ZURICH
4 has failed to pay the principle sum of \$500,000.00, less any benefits previously paid as a
5 result of the accident of August 25, 2009, as agreed in the policy.
6 26. Defendant ZURICH is in breach of the contract provisions contained in the policy.
7

8 **COUNT II: BAD FAITH**

9 27. Plaintiff hereby repeats and re-alleges each of the foregoing allegations as contained
10 herein. In addition, Plaintiff alleges as follows: :
11 28. Plaintiff BOBBY BARBEE alleges that his claim was handled unreasonably by
12 Defendant ZURICH. Further, Plaintiff was unreasonably forced to hire a lawyer, and was
13 compelled to commence litigation to receive full compensation under the insurance
14 contract. This list is not intended to be exhaustive but is intended to place Defendant on
15 notice of some of its alleged unreasonable conduct for purposes of "notice pleading."
16 29. Plaintiff BOBBY BARBEE alleges that Defendant ZURICH breached its contractual and
17 other obligations to investigate and adjust Plaintiff's claim in a reasonable manner, and /
18 or promptly pay Plaintiff his covered damages, and / or failed to perform an investigation
19 or evaluation of Plaintiff's claim to determine whether its actions were supported by a
20 reasonable basis, and / or breached the duty to give equal consideration, and / or breached
21 the implied covenant of good faith and fair dealing owed to Plaintiff, and are thereby
22 liable in tort for bad faith.
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1 30. As a direct and proximate result of the aforementioned wrongful conduct of Defendant
2 ZURICH, Plaintiff has incurred substantial special and general damages and is, upon
3 information and belief, still owed payment under the terms of the policy.

4 31. Further and in the alternative, Defendants' conduct described herein was done with the
5 intent to harm Plaintiff, or was of such nature and quality that under Arizona law there
6 should be an assessment of punitive damages in an amount appropriate to punish
7 Defendants.

8
9 WHEREFORE Plaintiffs BOBBY BARBEE and LINDA BARBEE pray for and demand
10 judgment against the Defendants, as follows:

- 11 1. For contract damages as alleged above;
- 12 2. For punitive damages in an amount sufficient to punish Defendants and deter similar
13 conduct in the future;
- 14 3. For an award of all reasonable attorney's fees incurred herein, pursuant to A.R.S. §
15 12-341(A);
- 16 4. For an award of all taxable costs involved in bringing this action pursuant to A.R.S. §
17 12-340;
- 18 5. In the event that Defendants, or any of them, deny the allegations contained herein,
19 for an additional award of fees, sanctions and costs, pursuant to A.R.S. § 12-349,
20 Rule 11 and / or A.R.S. § 12-341.01(C);
- 21 6. Pre-judgment interest on the amount of the Judgment referenced above, since the date
22 it was entered, August 25, 2010; and
- 23 7. For such other and further relief as this Court deems just and proper.

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RESPECTFULLY SUBMITTED this 15 day of December, 2010.

FRANKLIN & ASSOCIATES

By


Charles P. Franklin
Colby R. Kanouse
1920 East University Drive, Suite 102
Tempe, Arizona 85281
Attorneys for Plaintiff

Verification

State of Arizona)
)
County of Maricopa)

Robert Barbee, being first duly sworn upon his oath, deposes and says:

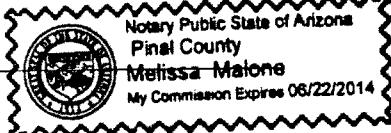
That he is the Plaintiff in the above entitled and numbered cause; that he has reviewed the contents of the foregoing Complaint and that the same is true of his own knowledge, except for those matters stated on information or belief, and as to those he believes them to be true.

Robert Barbee, Buddy Barbee
Robert Barbee

SUBSCRIBED AND SWORN to before me this 15th day of December, 2010.

Melissa Malone
NOTARY PUBLIC

My commission expires:



Verification

State of Arizona)
)
County of Maricopa)

Linda Barbee, being first duly sworn upon his oath, deposes and says:

That he is the Plaintiff in the above entitled and numbered cause; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his ^{her} own knowledge, except for those matters stated on information or belief, and as to those ^{she} believes them to be true.

 Linda Barbee

SUBSCRIBED AND SWORN to before me this 15 day of December, 2010.

Melissa Malone
NOTARY PUBLIC

1 Charles P. Franklin (State Bar Number: 011209) chuck@chuckfranklin.com
2 Colby R. Kanouse (State Bar Number: 024601) colby@chuckfranklin.com
3 FRANKLIN & ASSOCIATES, P.A.
4 1920 E. University Drive, Suite 102
5 Tempe, Arizona 85281
6 Telephone: (480) 551-0406
7 Facsimile: (480) 551-0407
8 Attorney for Plaintiff

COPY

DEC 15 2010



MICHAEL K. JEANES, CLERK
J. FOLTS
DEPUTY CLERK

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8 BOBBY BARBEE and LINDA BARBEE, a
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11 vs.
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DOES I - X; JANE DOES I - X; BLACK
CORPORATIONS I - V; WHITE
PARTNERSHIPS I - V;

14 Defendants.

Case Number:

15 CV 2010-081742

16 **CERTIFICATE ON COMPULSORY
17 ARBITRATION**

18 The undersigned certifies that the largest award sought by the complainant, including
19 punitive damages, but excluding interest, attorney's fees, and costs does exceed limits set by
20 *Superior Court Local Rule 3.10* for compulsory arbitration. Therefore, this case is not subject
21 to Rule 72 of the *Arizona Rules of Civil Procedure*.

22

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1
2 RESPECTFULLY SUBMITTED this 15 day of December 2010.
3

4 FRANKLIN & ASSOCIATES, P.A.
5

6 By: 
7

Charles P. Franklin
Colby Kanouse
11259 E. Via Linda #100-983
Scottsdale, Arizona 85259
Attorney for Plaintiff
8

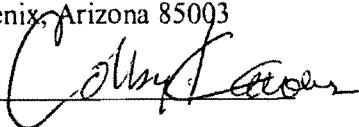
9 **MAIL CERTIFICATE**

10 **ORIGINAL and one COPY of the foregoing delivered this 15 day of December 2010, to:**

11 Clerk of the Court
12 MARICOPA COUNTY SUPERIOR COURT
13 201 W. Jefferson Street
Phoenix, Arizona 85003

14 **COPY of the foregoing delivered this 15 day of December 2010, to:**

15 Civil Court Administrator
16 MARICOPA COUNTY SUPERIOR COURT
17 201 W. Jefferson Street
Phoenix, Arizona 85003

18 By: 
19

20
21
22
23
24
25
26

1 Charles P. Franklin (State Bar Number: 011209) chuck@chuckfranklin.com
2 Colby R. Kanouse (State Bar Number: 024601) colby@chuckfranklin.com
3 FRANKLIN & ASSOCIATES, P.A.
4 1920 E. University Drive, Suite 102
5 Tempe, Arizona 85281
Telephone: (480) 551-0406
Facsimile: (480) 551-0407
Attorney for Plaintiff

STATE OF ARIZONA
DEPT. OF INSURANCE

DEC 16 2010

TIME 11:15 AM
SERVICE OF PROCESS

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MARICOPA**

8 BOBBY BARBEE and LINDA BARBEE, a
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DOES 1 - X; JANE DOES 1 - X; BLACK
PARTNERSHIPS 1 - V; WHITE
PARTNERSHIPS 1 - V,
Defendants.

Case Number:

CV2010-081742

SUMMONS

(Tort-Motor Vehicle)

If you would like legal advice from a lawyer,
contact the Lawyer Referral Service at

602-257-4434
or
www.lawyerfinders.org.

Sponsored by the
Maricopa County Bar Association

14 THE STATE OF ARIZONA TO THE DEFENDANT:

16 Zurich American Insurance Company
17 C/O Statutory Agent Arizona Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, Arizona 85018

18 YOU ARE HEREBY SUMMONED and required to appear and defend, within the time
19 applicable in this action in this Court. If served within Arizona, you shall appear and defend
20 within 20 days after the service of the Summons and Complaint upon you, exclusive of the day
of service. If served out of the State of Arizona-whether by direct service, by registered certified
21 mail, or by publication-you shall appear and defend within 30 days after the service of the
Summons and Complaint upon you is complete, exclusive of the day of service. Where process
22 is served upon the Arizona Director of Insurance as an insurer's attorney to receive service of
legal process against it in this state, the insurer shall not be required to appear, answer or plead
23 until expiration of 40 days after date of such service upon the Director. Service by registered or
certified mail without the State of Arizona is complete 30 days after the date of filing the receipt
24 and affidavit of service with the Court. Service by publication is complete 30 days after the date
of first publication. Direct service is complete when made. Service upon the Arizona Motor
Vehicles Superintendent is complete 30 days after filing the Affidavit of Compliance and return
25 receipt or Officers Return. Rule 4, *Ariz.R.Civ.P.*; *A.R.S.* sections 20-222, 28-502, and 28-503.
26

1
2 YOU ARE HEREBY NOTIFIED that in case of your failure to appear and defend within
3 the time applicable, judgment by default may be rendered against you for the relief demanded in
4 the Complaint.
5

6 YOU ARE CAUTIONED that in order to appear and defend, you must file an answer or
7 proper response in writing with the Clerk of this Court, accompanied by the necessary filing fee,
8 within the time required, and you are required to serve a copy of any Answer or response upon
9 the Plaintiff's attorney. Rule 10(D), *Ariz.R.Civ.P.*; *A.R.S. section 12-311*; Rule 5, *Ariz.R.Civ.P.*

10 SIGNED AND SEALED this _____ day of _____ 2010.
11
12

13 CLERK

14 COPY

15 DEC 15 2010

16 DEPUTY CLERK



17 MICHAEL K. JEANES, CLERK
18 J. FOLTS
19 DEPUTY CLERK

20 Method of Service:

21
22
23
24
25
26

27 X Private Process Service
28 Sheriff or Marshall
29 Personal Service
30 Registered/Certified Mail (Out of State)

EXHIBIT B

EXHIBIT B

MICHAEL K. JEANES, CLERK
RECEIVED CCC #5
DOCUM'TS REC'D. BY

10 DEC 20 PM 2:34

FILED

BY S. Stuby, DEP.

E-Z MESSENGER
1209 E. Washington Street
Phoenix, AZ 85034
(602) 258-8081 FAX: (602) 258-8864

CLIENT FILE NO.
BOBBY BARBEE

IN THE ARIZONA SUPERIOR COURT
STATE OF ARIZONA COUNTY OF MARICOPA

BOBBY BARBEE AND LINDA BARBEE
VS
ZURICH AMERICAN INSURANCE COMPANY

CASE NO. CV2010-081742

STATE OF ARIZONA)
MARICOPA COUNTY)

AFFIDAVIT OF SERVICE

THE AFFIANT, being sworn, states: That I am a private process server registered in MARICOPA COUNTY and an Officer of the Court. On 12/16/10 I received the SUMMONS; COMPLAINT; VERIFICATION; CERTIFICATE ON COMPULSORY ARBITRATION

from FRANKLIN & ASSOCIATES, PA and by CHARLES FRANKLIN in each instance I personally served a copy of each document listed above upon:
ZURICH AMERICAN INSURANCE COMPANY, A FOREIGN CORPORATION, BY SERVICE UPON THE ARIZONA DEPARTMENT OF INSURANCE on 12/16/10 at 11:15 am at 2910 NORTH 44TH STREET PHOENIX, AZ 85044 MARICOPA COUNTY in the manner shown below:

by leaving 2 true copy(ies) of the above documents with AMANDA BUETTNER, ADMINISTRATIVE ASSISTANT, STATED AUTHORIZED TO ACCEPT. TENDERED FEES IN THE AMOUNT OF \$ 15.00.

Description: WHITE, Female, Approx. 30 yrs. of age, 5' 5" tall, Weighing 160lbs., BROWN Hair,

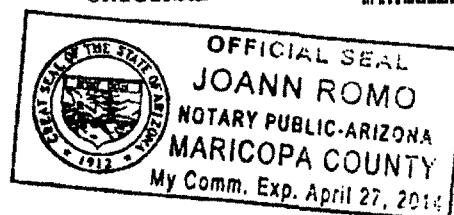
DON A. FOUTZ, ACPS Affiant
Sworn to before me the Dec 17, 2010

JoAnn Romo Notary

My Commission expires: 04/27/2014

AX022022261

2022261 16964 20
ORIGINAL



SERVICE OF PROCESS	\$	32.00
MILES	9	\$ 21.60
SERVICE CHARGE		\$ 6.50
AFFIDAVIT PREP/NOTARY	\$	10.00
TOTAL	\$	70.10